IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 18827 of 2004

Between:

K.Sulochana W/o Siddaiah
Shop NO.18, III Floor, Shorrof Bazar Kurnool.

..... PETITIONER

AND

1. The District Collector and District Magistrate Kurnool
2. The Sub-Registar, Kurnool
3. The AP. Wakf Board, rep.by its Secretary, Public Gardens Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus holding that the order in Rc.No.E8/2262/2002, dt. 17/08/2002 of the 1st Respondent as illegal, without jurisdiction, arbitrary and unreasonable and to grant such other relief or reliefs as this Hon'ble Court may deem fits and proper in the interest of Justice.

Counsel for the Petitioner:MR.P.VENGALA REDDY

Counsel for the Respondents 1 & 2 : GP FOR REVENUE

Counsel for Respondent No.3 : Sri S.M. Subhani

WRIT PETITION NO : 18828 of 2004

Between:

K.Saibaba Guptha s/o. Kantam Thimmaiah Setty,

R/o. Gorantla village, Kodumuru Mandal,

Kurnool District. PETITIONER

AND

1 The District Collector and District Magistrate Kurnool
2 The Sub-Registar, Kurnool
3 The AP. Wakf Board, rep.by its Secretary, Public Gardens Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus holding that the order in Rc.No.E8/2262/2002, dt. 17/08/2002 of the 1st Respondent as illegal, without jurisdiction, arbitrary and unreasonable and to grant such other relief or reliefs as this Hon'ble Court may deem fits and proper in the interest of Justice.

Counsel for the Petitioner:MR.P.VENGALA REDDY

Counsel for the Respondents 1 & 2 : GP FOR REVENUE

Counsel for Respondent No.3 : Sri S.M. Subhani

The Court made the following :

COMMON ORDER :

Heard Sri P.Vengal Reddy, Counsel for writ petitioners in both to the Writ Petitions, the learned Government Pleader for Revenue and the learned Standing Counsel Sri S.M.Subhani representing the A.P. state Wakf Board.

The writ petitioners in these Writ Petitions K.Sulochana and K.Sai Baba Guptha respectively had questioned Rc.No.E8/2262/2002 dated 17-8-2002 of the 1st respondent, District Collector and District Magistrate, Kurnool on the

ground that the same is illegal, without jurisdiction, arbitrary and unreasonable and prayed for such other suitable reliefs. In view of the fact that common questions are involved both these Writ Petitions are being disposed of by a common order.

The proceedings of the Collector and District Magistrate, Kurnool dated 17-8-2002, the impugned notice in these Writ Petitions, reads as hereunder :

Proceedings of the Collector and District Magistrate, Kurnool

Present : Sri G. Sai Prasad, I.A.S.

Rc.E8/2262/2002 Dt. 17-8-2002

Sub: Registration of wakf properties – Certain instructions – Issued.

Ref: Representation of the Muslims Service Society, dated 22-7-2002.

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ORDER:

During the review meeting held on 20-7-2002, it is brought to notice by the Muslim Service Society that the Sub-Registrars in the District are registering the properties on the basis of layout or plot Nos. without mentioning the Survey Numbers. In view of the above situation it has become very difficult to identify the unauthorized encroachments so made by the public over the wakf properties by the Revenue or Municipal Authorities in the absence of specific Survey Numbers.

It is therefore ordered that all registrations should be necessarily made duly mentioning the Survey Numbers irrespective of the property i.e., land/house/structure/open site by the Sub-Registrar in future. Any deviation in this regard will be reviewed very seriously. All Sub-Registrars in the District are requested to put an end to the procedure of registering the lands/houses/with lay out or plot Nos.

The following Survey Nos. of Kurnool District are the Wakf properties as represented by the Muslim Service Society, Kurnool. The order Survey Nos. of all Wakf properties in Kurnool District will be furnished

soon.

S.No. Extent Name of the village

----------375 & 378 17.85 Ac. Kallur

778 12.62 cents Kallur

494A & 494A 5.12 Ac. Kallur

Roza village (entire village) Total extent Ac.298.06

922 7.64 Ac. Kallur

496/1 6.38 Ac. Kallur

382 20.75 Ac. Kallur

133 14.14 Ac. Mamidalapadu

253, 255, 259 and 262, 151 and other total area 109.99 acres land in Kallur, Munagalapad, Mamidalapadu and Gondiparla villages.

611 44.85 Ac. Kallur

136 4.00 Ac. Kurnool

3 1.85 Ac. Kurnool

209/1 1.51 Ac. Wood lands, Kurnool

The Sub-Registrar, Kurnool is directed not to allow registrations pertaining to the above survey numbers hereafter.

The receipt of this order should be acknowledged by return of post.

Sd/-

G. Sai Prasad,

Collector, Kurnool

On a careful reading of the impugned proceedings issued by the 1st respondent it is clear that the 1st respondent issued certain directions in view of the difficulty to identify the unauthorized encroachments and most probably

the same had been issued with a view to protect the wakf properties in pursuance of the representations made by the Muslim Service Society. There cannot be any doubt or controversy that the object with which the impugned proceedings had been issued cannot be found fault. It may be in the interest of the institution or to protect the wakf properties. But the question is whether the 1st respondent is having authority or jurisdiction to issue the same and whether the impugned proceedings can be sustained or to be set aside.

The facts in nut-shell in these Writ Petitions are as narrated hereunder :

K.Sulochana in W.P.No.18827/2004 had stated that she had purchased house site of an extent of 194.22 sq. yards being plot No.186, situated in S.No.611 of Kallur Gram Panchayat from one Dr.G.Pattabhi Ram s/o. late G.L. Narasimham, Plot No.123, 9th Road, Mahendra Hills, East Marredpally, Secunderabad under a registered sale deed on 22-11-1993. It is stated that her vendor purchased the same from one P.Sankara Reddy s/o. Perugu Narayana Reddy, Dinna Devarapadu village, Kurnool Mandal under a registered sale deed on 11-2-1991 and since the said purchase she had been in possession of the house site. The 3rd respondent-A.P. Wakf Board, filed a civil suit O.S.No.24/69 on the file of Principal Subordinate Judge, Kurnool against Perugu Narayana Reddy, the father of the vendor and certain others for declaration that the land covered under S.No.611 of Kallur village is wakf property and for possession of the same. The learned Subordinate Judge had dismissed the suit on 16-3-1970 holding the subject matter of the suit is not wakf property and the 3rd

respondent had not preferred any Appeal against the said Judgment which became final. Several other details had been narrated relating to S.No.611 being divided into plots and the subsequent sales. It is also stated that one P.V.Chenna Reddy filed W.P.No.17022/2002 which had been disposed of on 26-12-2002 directing the 2nd respondent to receive the documents presented by the writ petitioner without insisting on the impugned order or by raising any objections regarding the title of the petitioner vis-à-vis the 3rd respondent.

Likewise, Sai Baba Gupta in W.P.No.18828/2004 prayed for similar relief and he had averred that he had purchased house site of an extent of 194.22 sq. yards in plot No.189 in S.No.611/1 of Kallur Gram Panchayat from one K.Brahmaiah s/o. Sankaraiah, H.No.34, New Krishna Nagar, Kallur, Kurnool District under a registered sale deed on 27-12-2000 and the said Brahmaiah had purchased the same from one G.Pattabhiram s/o. late G.L. Narasimham, Plot No.123, 9th Road, Mahendra Hills, East Maredpally, Secunderabad under a registered sale deed on 20-11-1993 and since the said purchase he had been in possession of the said house site. The said Pattabhiram had purchased the said plot from P.Sankar Reddy s/o. Perugu Narayana Reddy. It was also further stated that O.S.No.24/69 which was filed by the 3rd respondent was dismissed and in the said suit Perugu Narayana Reddy figured as 7th defendant. Several other details just on the lines of the prior Writ Petition had been narrated.

The Counsel on record made certain submissions to substantiate their respective contentions. As already referred to supra, the object of protecting

the properties of the institution cannot be found fault, the same being an appreciable object. However, at the same time the 1st respondent may have to act in accordance with law. Questions of title cannot be normally adjudicated in writ proceedings. However, for the present context suffice to refer to the civil proceedings O.S.No.24/69 between the 3rd respondent and the father of the vendor and the vendor's vendor of the writ petitioners. Certain submissions at length were made by the Standing Counsel representing the Wakf Board to the effect that these are encroachers and hence in accordance with the procedure contemplated by Sections 54 and 55 of the Wakf Act, 1995 the Wakf Board is entitled to initiate action. This aspect is only an incidental question since the main grievance ventilated by the writ petitioners is that the documents are not being registered by the concerned Sub-Registrar. When the authorities are discharging statutory functions as specified by the statutory provisions, such powers or functions cannot be curtailed by mere executive fiat unless the same can be said to be in accordance with the provisions of the Act. By yet another valid legislation, if restrictions are imposed the registering authorities are bound to follow such statutory restrictions also unless and otherwise they can be said to be invalid. Executive fiat beyond permissible sphere cannot be approved by Courts. This is the area where judicial review of such action would come into play. The 1st respondent might have acted on certain representations made by a religious society. Though the anxiety is to protect the property of an institution, the mode adopted in enforcing the same cannot have judicial sanction. The Registering authorities under the Indian

Registration Act are bound to act in accordance with the provisions of the Act. Furnishing or non-furnishing of certain particulars while registering the documents etc., fall within the duties of the registering authorities who are expected to be guided by the provisions of the Indian Registration Act. In P.Narasimha Reddy and another Vs. Sub-Registrar, Shameerpet Mandal, R.R.District and another **it was held that the Sub-Registrar cannot refuse to register a document on the strength of a memo addressed by the Mandal Revenue Officer. In** Sub-Registrar Vs. K.Rama Krishna Raju **a Division Bench of this Court also expressed the same view. In** Chenna Reddy Vs. District Collector, Kurnool , **a similar case like the one on hand, the same view was expressed by a learned single Judge of this Court. In** Krishna Gopal Kataria Vs. State of Punjab **it was held that the Registration Act is a complete Code by itself and the powers of the Registrars and the Sub-Registrars are clearly defined by demarking and the Inspector General of Registration under Section 69 can only exercise general superintendence over all the Registrars under the Act and make Rules consistent with the provisions of the Act providing for matters mentioned therein and Sections 21, 23, 28, 32, 35 and 74 authorise the Sub-Registrar to refuse registration if the documents are not properly executed or presented or the subject matter of the document lay beyond the territorial jurisdiction and nothing in the Act authorized either the State Government or the Registrar to instruct the Sub-Registrar not to register a document, where the State Government and the Registrar in turn instructed the Sub-Registrar not to register sale deeds or lease deeds in respect of properties belonging to religious charitable institutions. The decision of the Division Bench of Madras**

High Court in Nalla Goundan Vs. Krishna Swami Naicker **had been referred to. In** S.Nagi Reddy Vs. Joint Sub-Registrar-I, Registration and Stamps, Tirupati **it was held that the Sub-Registrar being a statutory authority cannot refuse to register a document at the dictation of a extraneous authority and refusal to register sale deed of the petitioner on the direction of the Custodian of Endowments, an extraneous authority is not legal and hence directions were given to register sale deed if the same is in order and in accordance with law.**

In the light of the foregoing discussion, this Court is of the considered opinion that the impugned proceedings issued by the 1st respondent can be said to be without authority or jurisdiction and hence the registering authorities are not bound to follow such instructions. Even otherwise, in the present case, the civil dispute appears to have attained finality. Be that as it may, this Court is not inclined to go into the other questions relating to the different provisions of the Act and the procedure to be followed and the powers of the A.P. Wakf Board in this regard since these questions may not be germane to the present litigation, suffice to state that such directions cannot be issued by the 1st respondent in the light of the settled legal position referred to supra. In view of the same the writ petitioners are bound to succeed and accordingly the Writ Petitions are hereby allowed. No order as to costs.

Justice P.S. Narayana

Date : -6-2005

L.R. copy to be marked : YES / No

AM

Rule Nisi has been made absolute.

Witness the Hon'ble Bilal Nazki, the Acting Chief Justice on this Monday, the Sixth day of June Two Thousand and Five.

ASSISTANT REGISTRAR

To:

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1. The District Collector and District Magistrate, Kurnool
2. The Sub-Registar, Kurnool
3. The Secretary, AP. Wakf Board, Public Gardens Road, Hyderabad.

4. **C.Cs. to Government Pleader for Revenue,**

High Court of Andhra Pradesh,

Hyderabad.

5. Two C.Cs. to Standing Counsel for A.P. Wakf Board,

High court of Andhra Pradesh,

Hyderabad.

6. **8 L.R. copies**

7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

8. The Secretary, A.P. Advocates Association Library, High court Buildings, Hyderabad.

9. Two C.D. copies